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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS:

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

In the matter of:

Docket No. S-20437A-05-0925

Reserve Oil & Gas, Inc., a Nevada corporation
3507 North Central Avenue, Suite 503
Phoenix, Arizona 85012

Allen and Jane Doe Stout, Sr., husband and wife
1309 West Portland Street
Phoenix, Arizona 85007-2102

Allen and Jane Doe Stout, Jr., husband and wife
1309 West Portland Street
Phoenix, AZ 85007-2102

Respondents.

**RESPONDENTS' MOTION FOR
LEAVE TO AMEND ANSWER OF
RESERVE OIL & GAS, INC., ALLEN C.
STOUT AND EUGENIA STOUT,
HUSBAND AND WIFE, AND ANSWER
OF ALLEN L. STOUT TO
TEMPORARY ORDER TO CEASE
AND DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

NOW COME the Respondents and file this, their Motion for Leave to Amend Answers to Temporary Order to Cease and Desist and Notice of Opportunity for Hearing (hereinafter "Motion for Leave") and, in support thereof, would respectfully show the Hearing Officer as follows:

I.

PRELIMINARY STATEMENT

Pursuant to, *inter alia* and without limitation, Rule 15(a) of the Arizona Rules of Civil Procedure and Rules 14-3-106 and 14-3-216 of the Arizona Administrative Codes' Rules of Practice and Procedure before the Corporation Commission ("AAC"), the Respondents hereby move for leave to amend: (a) Answer of Respondents Reserve Oil & Gas, Inc., Allen C. Stout and Eugenia Stout, Husband and Wife, to Temporary Order to Cease and Desist and Notice of Opportunity for Hearing; and (b) Answer of Allen L. Stout to Temporary Order to Cease and Desist and Notice of Opportunity for Hearing.

Respondents submit that the Motion for Leave is necessary, just and would not prejudice or otherwise impose any undue burden or hardship on the Securities Division. The Motion for Leave

1 is supported by the Memorandum of Points and Authorities below, and the Respondents' respective
2 proposed Amended Answers are attached hereto as Exhibits "A," and "B."

3 II.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 Respondents seek to amend their respective answers and to add applicable affirmative
6 defenses. The Respondents' former Counsel, Burton Bentley, Esq., who signed the Respondents'
7 original Answers obviously was not adequately versed in state and federal securities laws and
8 inadvertently and incorrectly admitted to various allegations by the Securities Division. This is
9 evidenced, *inter alia* and without limitation, by the inconsistent answers provided by different
10 Respondents to the exact same allegations. By way of example, the Securities Division alleged
11 that Respondents offered or sold securities in the form of investment contracts within or from
12 Arizona, that said securities were not registered and that the subject conduct violated A.R.S. §44-
13 1841. See Temporary Order to Cease and Desist and Notice of Opportunity for Hearing at ¶¶ 38-
14 40. Mr. Bentley inadvertently and incorrectly admitted that Allen C. Stout and Reserve Oil & Gas
15 Inc. violated the referenced statute, but Respondent Allen L. Stout denied these allegations. See
16 Exhibits A and B. Equally important, Mr. Bentley failed to assert a single defense on behalf of the
17 Respondents.

18 Mr. Bentley, who was not versed on securities law, admitted without defense to allegations
19 against the Respondents without understanding the full legal impact the admissions would
20 ultimately have on the Respondents' respective rights to defend themselves in this administrative
21 proceeding, and on the Securities Division's burden to prove its case. Respondents never admitted
22 to the violations in their respective capacities and never would have admitted to any violations
23 upon proper legal advice by counsel competent in the area of securities law.

24 The tenet that a party should be afforded the right to amend a pleading is so well-
25 established that it has been expressly incorporated into the Arizona Rules of Civil Procedure and
26 the AAC. Specifically, Rule 15 provides that a party may amend the party's pleading by seeking
27 leave of court and "[l]eave to amend *shall be freely given* when justice requires." See Ariz.R.Civ.P.

1 15(a)(emphasis supplied). Similarly, AAC Rule 14-3-106(E), which expressly addresses
2 amendments to pleadings, provides “[t]he Commission or presiding officer, in his discretion, may
3 allow any formal document to be amended or corrected.”

4 Importantly, Arizona case authority has consistently recognized and upheld a party’s right
5 to amend their pleadings—including the right to add defenses. *See Sirek v. Fairfield Snowbowl,*
6 *Inc.*, 166 Ariz. 183, 185-86 (App. 1990); *see also, Romo v. Reyes*, 26 Ariz.App. 374, 375-76
7 (1976)(holding amendments to pleadings should be liberally allowed); *Gary Outdoor Advertising*
8 *Co. v. Sun Lodge, Inc.*, 133 Ariz. 240, 242 (1982); *Trujillo v. Brasfield*, 119 Ariz. 8, 9-10, (App.
9 1978); and *Cathemer v. Hunter*, 27 Ariz.App. 780, 785-86 (1976). In *Sirek*, Fairfield Snowbowl,
10 Inc. (“Fairfield”) moved for summary judgment after some discovery had been conducted and
11 claimed that an agreement between Sirek and Fairfield released Fairfield from liability. Sirek filed
12 a cross-motion for partial summary judgment and claimed that: (a) Fairfield had failed to include
13 the defense of release in its recital of affirmative defenses, and (b) the affirmative defense was
14 waived because it was not included in the answer to Sirek’s complaint. Fairfield moved for leave
15 to amend its answer to include the affirmative defense of release.

16 The Court of Appeals recognized that Rule 12(i) of the Arizona Rules of Civil Procedure
17 only expressly removes the court’s discretion to allow leave to amend a responsive pleading or
18 motion with respect to four defenses: (1) lack of personal jurisdiction; (2) improper venue; (3)
19 insufficiency of process; or (4) insufficiency of service of process. *Sirek*, 166 Ariz. At 185-86.
20 While those four jurisdictional defenses are strictly waived if omitted from a Rule 12 motion to
21 dismiss or the answer, the Court of Appeals stated that the trial court has discretion to permit all
22 other defenses to be asserted by amendment. *Id.* Thereafter, the Court of Appeals noted that a
23 court may allow a defendant to amend an answer to include an omitted defense so long as the
24 plaintiff is not surprised or prejudiced thereby. *Id.* “The prejudice considered by the courts is
25 generally ‘not that occasioned by defeat on the merits, but rather the inconvenience and delay
26 suffered when the amendment raises new issues or inserts new parties into the litigation.’” *Id.*
27 (*quoting Romo*, 26 Ariz.App. at 376). The Court determined that Sirek suffered no inconvenience

1 or unreasonable delay due to the amendment of Snowbowl's answer and, therefore, held that the
2 trial court did not abuse its discretion in allowing Snowbowl to amend its answer to include the
3 additional defense. *Id.*

4 Here, Respondents do not seek to add any of the four jurisdictional defenses that are strictly
5 waived if omitted from the original answer. Respondents simply seek to add appropriate non-
6 jurisdictional defenses because Respondents' prior counsel inadvertently failed to assert same in
7 the original Answers. Also, Respondents seek to correct answers that were inadvertently or
8 incorrectly asserted in response to the Securities Division's allegations. As stated by the Arizona
9 Court of Appeals, Division One, in *Cathemer*, "amendments should be permitted with great
10 liberality so that cases may be decided on the merits rather than on mere technicalities of
11 pleadings." *Cathemer*, 27 Ariz.App. 780, 785-86. Further, the Arizona Supreme Court, in *Baxter*
12 *v. Harrison*, 83 Ariz. 354, 356 (1958), recognized that it is within the power of the trial court to
13 allow amendment of the pleadings at any time. Here, it would be manifestly unjust to hold
14 Respondents to inadequate and incorrect responses to the Securities Division's allegations and to
15 deprive Respondents of the ability to allege defenses that former counsel failed to understand and
16 include.

17 Additionally, the Parties are still conducting or seeking to conduct discovery. Indeed,
18 Respondents were granted the right, and intend to depose, Investigator Smith. The Hearing in this
19 case has been postponed and no new date has been scheduled. Therefore, the Securities Division
20 would not be inconvenienced and will not suffer any delay by virtue of the Administrative Law
21 Judge granting Respondents' Motion for Leave. The Securities Division cannot in good faith argue
22 that it would suffer surprise that Respondents would seek leave to assert proper responses and
23 defenses where prior counsel failed to assert same. No new parties are being added to the
24 litigation, and the grant of Respondents' Motion to Leave irrefutably would not rise to a level of
25 prejudice such that a denial of the Motion for Leave is warranted. The exponentially greater
26 prejudice and injustice would be to force Respondents to stand, without defense, on the incorrect
27 and inadequate original Answers prepared by former counsel. Such a ruling would be contrary to

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1 the referenced case authority and the well-established tenet that requests for leave to amend should
2 be "freely given." Ariz.R.Civ.P. 15(a).

3 III.

4 CONCLUSION

5 For the forgoing reasons, the Respondents respectfully request that the Administrative Law
6 Judge grant Respondents' Motion for Leave to Amend.

7 RESPECTFULLY SUBMITTED this 9th day of February, 2007.

8 ROSHKA DeWULF & PATTEN, PLC

9
10 By 

11 Paul J. Roshka, Jr., Esq.
12 Jeffrey D. Gardner, Esq.
13 One Arizona Center
14 400 East Van Buren Street, Suite 800
15 Phoenix, Arizona 85004
16 602-256-6100 (telephone)
17 602-256-6800 (facsimile)
18 Attorneys for Respondents


19 ORIGINAL and thirteen copies of the foregoing
20 filed this 9th day of February, 2007 with:

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Copy of the foregoing hand-delivered
26 this 9th day of February, 2007 to:

27 Marc E. Stern, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Shoshana O. Epstein
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007



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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS:**

3 JEFF HATCH-MILLER – Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 GARY PIERCE

8 In the matter of:

Docket No. S-20437A-05-0925

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15 Allen and Jane Doe Stout, Jr., husband and wife
16 1309 West Portland Street
17 Phoenix, AZ 85007-2102

18 Respondents.

**AMENDED ANSWER OF
RESPONDENTS RESERVE OIL &
GAS, INC. AND ALLEN C. STOUT
AND EUGENIA STOUT, HUSBAND
AND WIFE, TO TEMPORARY ORDER
TO CEASE AND DESIST AND NOTICE
OF OPPORTUNITY FOR HEARING**

19 Respondents Reserve Oil & Gas, Inc., a Nevada corporation (“ROG”), Allen C. Stout
20 (“Stout”) and Eugenia Stout, husband and wife by and through undersigned attorney, do hereby file
21 their Answer to the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing
22 (“TC&D”), and do hereby admit, deny and allege as set forth below. Importantly, Eugenia Stout
23 had absolutely no involvement whatsoever with regard to the allegations that form the basis of the
24 TC&D. Therefore, Eugenia Stout’s response to each and every allegation is that she is without
25 sufficient information to form a belief as to each allegation and, therefore, denies every allegation.
26 All affirmative defenses set forth by ROG and Stout are hereby incorporated by reference to
27 Eugenia Stout. Allen C. Stout and ROG are collectively referred to herein as “Respondents.”

28 **I.
JURISDICTION**

29 1. Answering Paragraph 1, Respondents admit the Commission has jurisdiction over
30 this matter.

31 2. Answering Paragraph 2, Respondents admit the allegations therein.

Exhibit A

11. Paragraph 11 contains no allegation, nonetheless Respondents denies same.

FACTS

15. Answering Paragraph 15, Respondents admit the allegations except that Respondents submit that only a single project was engaged by ROG.

2

1 16. Answering Paragraph 16, Respondents submit that only a single well is involved in
2 the project offered by ROG, and Respondents are without information sufficient to form a belief as
3 to the remaining allegations of Paragraph 16 and, on that basis, deny same.

4 17. Answering Paragraph 17, Respondents are without information sufficient to form a
5 belief as to the allegations of Paragraph 17 and, on that basis, denies same.

6 18. Answering Paragraph 18, Respondents are without information sufficient to form a
7 belief as to the allegations of Paragraph 18 and, on that basis, denies same.

8 19. Answering Paragraph 19, Respondents deny each and every allegation therein and
9 thereon allege that the projected life of 20 to 30 years refers generally to the Barnett Shale and not
10 to the particular well site offered by ROG.

11 20. Answering Paragraph 20, Respondents deny each and every allegation therein.

12 21. Answering Paragraph 21, Respondents deny each and every allegation therein.

13 22. Answering Paragraph 22, Respondents deny each and every allegation therein.

14 23. Answering Paragraph 23, Respondents submit that the content that was on the
15 website speaks for itself, and Respondents are without information sufficient to form a belief as to
16 the allegations of Paragraph 23 and, on that basis, deny same.

17 24. Answering Paragraph 24, Respondents submit that the content that was on the
18 website speaks for itself, and Respondents are without information sufficient to form a belief as to
19 the allegations of Paragraph 24 and, on that basis, deny same.

20 25. Answering Paragraph 25, Respondents submit that the content that was on the
21 website speaks for itself, and Respondents are without information sufficient to form a belief as to
22 the allegations of Paragraph 25 and, on that basis, deny same.

23 26. Answering Paragraph 26, Respondents submit that the content that was on the
24 website speaks for itself, and Respondents are without information sufficient to form a belief as to
25 the allegations of Paragraph 26 and, on that basis, deny same.

1 the allegations of Paragraph 26 and, on that basis, deny same.

2 27. Answering Paragraph 27, Respondents submit that the content that was on the
3 website speaks for itself, and Respondents are without information sufficient to form a belief as to
4 the allegations of Paragraph 27 and, on that basis, deny same.

5 28. Answering Paragraph 28, Respondents submit that the content that was on the
6 website speaks for itself, and Respondents are without information sufficient to form a belief as to
7 the allegations of Paragraph 28 and, on that basis, deny same.

8 29. Answering Paragraph 29, Respondents submit that the content that was on the
9 website speaks for itself. Respondents admit that disclaimers were included on the website.
10 Respondents are without information sufficient to form a belief as to the remaining allegations of
11 Paragraph 29 and, on that basis, deny same.

12 30. Answering Paragraph 30, Respondents deny the allegations contained in Paragraph
13 30 of the TC&D insofar as they are directed at Allen L. Stout. Respondents are without
14 information sufficient to form a belief as to the allegations of Paragraph 30 and, on that basis, deny
15 same.
16

17 31. Answering Paragraph 31, Respondents are without information sufficient to form a
18 belief as to the allegations of Paragraph 31 and, on that basis, deny same.
19

20 32. Answering Paragraph 32, Respondents admit the allegations therein.

21 33. Answering Paragraph 33, Respondents admit the allegations therein.

22 34. Answering Paragraph 34, Respondents admit the allegations therein.

23 35. Answering Paragraph 35, Respondents admit the allegations therein.

24 36. Answering Paragraph 36, Respondents submit that the content that was on the
25 website speaks for itself. Respondents deny that they were required to inform visitors to the
26 website that Stout was convicted of tax evasion in 1997. Respondents are without information
27

1 sufficient to form a belief as to the remaining allegations of Paragraph 36 and, on that basis, deny
2 same.

3 37. Answering Paragraph 37, Respondents deny that they were required to inform
4 visitors to the website that Stout was convicted of tax evasion in 1997. Respondents are without
5 information sufficient to form a belief as to the remaining allegations of Paragraph 37 and, on that
6 basis, deny same.

7
8 **IV.**

9 **VIOLATION OF A.R.S. § 44-1841**
10 **(Offer and Sale of Unregistered Securities)**

11 38. Respondents deny the allegations contained in Paragraph 38.

12 39. Respondents deny the allegations contained in Paragraph 39.

13 40. Respondents deny the allegations contained in Paragraph 40.

14
15 **V.**

16 **VIOLATION OF A.R.S. § 44-1842**

17 **(Transactions by Unregistered Dealers or Salesmen)**

18 41. Respondents deny the allegations contained in Paragraph 41.

19 42. Respondents deny the allegations contained in Paragraph 42.

20
21 **VI.**

22 **VIOLATION OF A.R.S. § 44-1842**

23 **(Fraud in Connection with the Offer or Sale of Securities)**

24 43. Respondents deny the allegations contained in Paragraph 43.

25 44. Respondents deny the allegations contained in Paragraph 44.

26 45. Respondents hereby specifically deny all allegations not admitted, denied or
27 qualified herein.

VII

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

Respondents deny that the alleged conduct supports the issuance of the TC&D, and denies that public welfare requires the TC&D. Respondents admit that it has complied with all aspects of the TC&D thus far, and will continue to do so. To the extent TC&D Section VII contains additional allegations, Respondents deny same.

XIII.

SECURITIES DIVISION'S REQUESTED RELIEF

By inadvertence or otherwise, the Securities Division omitted Counts IX, X, XI and XII—the TC&D sections jump from VII to XIII. Respondents requests that the Commission deny the Requested Relief as identified in Paragraphs 1, 2, 3, 4, and 5 of Section XIII of the TC&D.

XIV.

HEARING OPPORTUNITY

By inadvertence or otherwise, the Securities Division omitted Counts IX, X, XI and XII—the TC&D sections jump from VII to XIII. Respondents have requested a hearing pursuant to A.R.S. § 44-1972.

AFFIRMATIVE DEFENSES

46. For their first affirmative defense, Respondents allege that the TC&D fails to state a claim upon which relief can be granted.

47. For their second affirmative defense, Respondents allege that no security is involved in these alleged transactions.

1 48. For their third affirmative defense, Respondents allege that any ruling in this action
2 would be unconstitutional under the laws of the State of Arizona and under the laws of the United
3 States of America for, *inter alia*, failing to provide due process, among other provisions.

4 49. For their fourth affirmative defense, Respondents allege that application of A.R.S. §
5 44-2031(C) in this case exceeds the authority granted to the Commission by the Arizona
6 Constitution.

7 50. For their fifth affirmative defense, Respondents allege that to the extent the Units
8 that were allegedly offered or sold are determined to be investment contract securities the
9 Respondents and the subject Units are exempt from the registration provisions of the Arizona
10 Securities Act.

11 51. For their sixth affirmative defense, Respondents allege that all of their actions were
12 taken for a proper purpose.

13 52. For their seventh affirmative defense, Respondents allege that they have not taken
14 any improper action within or from the State of Arizona.

15 53. For their eighth affirmative defense, Respondents allege that the Commission's
16 claims are barred by the applicable statute(s) of limitations.

17 54. For their ninth affirmative defense, Respondents state that they did not offer or sell
18 investment contracts under Arizona law.

19 55. For their tenth affirmative defense, Respondents allege the claims in the TC&D are
20 barred by estoppel.

21 56. For their eleventh affirmative defense, Respondents allege the claims in the TC&D
22 are barred by laches.

23 57. For their twelfth affirmative defense, Respondents allege that the claims in the
24 TC&D are barred by waiver.

1 58. For their thirteenth affirmative defense, Respondents allege that the claims in the
2 TC&D are barred by assumption of risk.

3 59. For their fourteenth affirmative defense, Respondents allege that the Securities
4 Division has failed to allege securities fraud with reasonable particularity as required by Rule 9(b)
5 of the Arizona Rules of Civil Procedure.

6 60. For their fifteenth affirmative defense, Respondents allege that they did not know,
7 and in the exercise of reasonable care could not have known, of any alleged untrue statements or
8 material omissions as set forth in the TC&D.

9 61. For their sixteenth affirmative defense, Respondents state that they have not acted
10 with the requisite scienter.

11 62. For their seventeenth affirmative defense, Respondents state that they have not
12 employed a deceptive or manipulative device in connection with the offer, purchase or sale of any
13 security.

14 63. For their eighteenth affirmative defense, Respondents state that the alleged investors
15 have suffered no injuries or damages as a result of Respondents' acts or the alleged acts of any of
16 the other Respondent named in this action.

17 64. For their nineteenth affirmative defense, Respondents state that they never made any
18 misrepresentations or omissions, material or otherwise.

19 65. For their twentieth affirmative defense, Respondents allege that they acted in good
20 faith and did not directly or indirectly induce the conduct at issue.

21 66. For their twenty-first affirmative defense, Respondents state that they have caused
22 no damages.

67. For their twenty-second affirmative defense, Respondents allege that purchasers relied on others, and not the Respondents named in this action, in connection with the matters at issue in the TC&D.

68. Respondents allege such other affirmative defenses set forth in Arizona Rule of Civil Procedure 8(c), as may be determined to be applicable through discovery.

69. Respondents reserve the right to amend this Answer to assert additional defenses after completion of appropriate discovery.

IX.

ANSWER AND AFFIRMATIVE DEFENSE REQUIREMENTS

Respondent has fully complied with the Answer and Affirmative Defense requirements.

WHEREFORE, there is no basis for the imposition of liability of any kind or nature, and there should be no award of any kind or nature against the Respondent.

RESPECTFULLY SUBMITTED this 9th day of February, 2007.

ROSHKA DeWULF & PATTEN, PLC

By Paul J. Roshka, Jr., Esq.
Jeffrey D. Gardner, Esq.
One Arizona Center
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Phoenix, Arizona 85004
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Attorneys for Respondents

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9 Marc E. Stern, Administrative Law Judge
10 Hearing Division
11 Arizona Corporation Commission
12 1200 West Washington Street
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14 Shoshana O. Epstein
15 Securities Division
16 Arizona Corporation Commission
17 1300 West Washington Street, 3rd Floor
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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3 JEFF HATCH-MILLER – Chairman
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15 Allen and Jane Doe Stout, Jr., husband and wife
16 1309 West Portland Street
17 Phoenix, AZ 85007-2102

18 Respondents.

**AMENDED ANSWER OF ALLEN L.
STOUT TO TEMPORARY ORDER TO
CEASE AND DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

19 Respondent Allen L. Stout (“Stout” or “Respondent”) for and on behalf of himself and none
20 others, by and through undersigned attorney, does hereby file his Answer to the Temporary Order
21 to Cease and Desist and Notice of Opportunity for Hearing (“TC&D”), and does hereby admit,
22 deny and allege as follows:

23 **I.
JURISDICTION**

24 1. Answering Paragraph 1, Respondent Stout admits the Commission has jurisdiction
25 over this matter.

26 2. Answering Paragraph 2, Stout admits the allegations therein.

27 3. Answering Paragraph 3, Stout denies that Allen C. Stout is a Senior¹, but admits the
remaining allegations therein.

¹ Respondents have previously informed the Securities Division of the Arizona Corporation Commission that Allen L. Stout is not a Junior and Allen C. Stout is not a Senior.

1 4. Answering Paragraph 4, Stout admits the allegations therein.

2 5. Answering Paragraph 5, Stout denies each and every allegation therein.

3 6. Answering Paragraph 6, Stout is without information or knowledge sufficient to
4 form a belief as to the truth of the allegations therein, and therefore denies the same.

5 7. Answering Paragraph 7, Stout denies that he is a Junior, but admits the remaining
6 allegations therein.

7 8. Answering Paragraph 8, Stout denies each and every allegation therein.

8 9. Answering Paragraph 9, Stout denies all allegations made therein.

9 10. Answering Paragraph 10, Stout denies each and every allegation therein.

10 11. Paragraph 11 contains no allegation, nonetheless Stout. denies same.

11 **III.**

12 **FACTS**

13 12. Answering Paragraph 12, all prior answers are hereby incorporated by reference and
14 realleged as though set forth in full.

15 13. Stout denies the allegations contained in Paragraph 13 of the TC&D insofar as they
16 are directed at him.

17 14. Stout denies the allegations contained in Paragraph 14 of the TC&D insofar as they
18 are directed at him.

19 15. Stout denies the allegations contained in Paragraph 15 of the TC&D insofar as they
20 are directed at him.

21 16. Answering Paragraph 16, Stout is without information sufficient to form a belief as
22 to the allegations of Paragraph 16 and, on that basis, denies same.

23 17. Answering Paragraph 17, Stout is without information sufficient to form a belief as
24 to the allegations of Paragraph 17 and, on that basis, denies same.
25
26
27

1 18. Answering Paragraph 18, Stout is without information sufficient to form a belief as
2 to the allegations of Paragraph 18 and, on that basis, denies same.

3 19. Answering Paragraph 19, Stout is without information sufficient to form a belief as
4 to the allegations of Paragraph 19 and, on that basis, denies same.

5 20. Answering Paragraph 20, Stout is without information sufficient to form a belief as
6 to the allegations of Paragraph 20 and, on that basis, denies same.

7 21. Answering Paragraph 21, Stout is without information sufficient to form a belief as
8 to the allegations of Paragraph 21 and, on that basis, denies same.

9 22. Answering Paragraph 22, Stout is without information sufficient to form a belief as
10 to the allegations of Paragraph 22 and, on that basis, denies same.

11 23. Answering Paragraph 23, Stout is without information sufficient to form a belief as
12 to the allegations of Paragraph 23 and, on that basis, denies same.

13 24. Answering Paragraph 24, Stout is without information sufficient to form a belief as
14 to the allegations of Paragraph 24 and, on that basis, denies same.

15 25. Answering Paragraph 25, Stout is without information sufficient to form a belief as
16 to the allegations of Paragraph 25 and, on that basis, denies same.

17 26. Answering Paragraph 26, Stout is without information sufficient to form a belief as
18 to the allegations of Paragraph 26 and, on that basis, denies same.

19 27. Answering Paragraph 27, Stout is without information sufficient to form a belief as
20 to the allegations of Paragraph 27 and, on that basis, denies same.

21 28. Answering Paragraph 28, Stout is without information sufficient to form a belief as
22 to the allegations of Paragraph 28 and, on that basis, denies same.

23 29. Answering Paragraph 29, Stout is without information sufficient to form a belief as
24 to the allegations of Paragraph 29 and, on that basis, denies same.

are directed at him.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

41. Stout denies the allegations contained in Paragraph 41 of the TC&D insofar as they are directed at him.

42. Stout denies the allegations contained in Paragraph 42 of the TC&D insofar as they are directed at him.

VI.

VIOLATION OF A.R.S. § 44-1842

(Fraud in Connection with the Offer or Sale of Securities)

43. Stout denies the allegations contained in Paragraph 43 of the TC&D insofar as they are directed at him.

44. Stout denies the allegations contained in Paragraph 44 of the TC&D insofar as they are directed at him.

45. Stout hereby specifically denies all allegations not admitted, denied or qualified herein.

VII

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

Stout denies that the alleged conduct supports the issuance of the TC&D, and denies that public welfare requires the TC&D. Stout admits that it has complied with all aspects of the TC&D thus far, and will continue to do so. To the extent TC&D Section VII contains additional allegations, Stout denies same.

XIII.

SECURITIES DIVISION'S REQUESTED RELIEF

By inadvertence or otherwise, the Securities Division omitted Counts IX, X, XI and XII—the TC&D sections jump from VII to XIII. Respondent Stout requests that the Commission deny the Requested Relief as identified in Paragraphs 1, 2, 3, 4, and 5 of Section XIII of the TC&D.

XIV.

HEARING OPPORTUNITY

By inadvertence or otherwise, the Securities Division omitted Counts IX, X, XI and XII—the TC&D sections jump from VII to XIII. Respondent has requested a hearing pursuant to A.R.S. § 44-1972.

AFFIRMATIVE DEFENSES

46. For his first affirmative defense, Respondent alleges that the TC&D fails to state a claim upon which relief can be granted.

47. For his second affirmative defense, Respondent alleges that no security is involved in these alleged transactions.

48. For his third affirmative defense, Respondent alleges that any ruling in this action would be unconstitutional under the laws of the State of Arizona and under the laws of the United States of America for, *inter alia*, failing to provide due process, among other provisions.

49. For his fourth affirmative defense, Respondent alleges that application of A.R.S. § 44-2031(C) in this case exceeds the authority granted to the Commission by the Arizona Constitution.

50. For his fifth affirmative defense, Respondent alleges that to the extent the Units that the Units that were allegedly offered or sold by any of the of the named Respondents are

1 determined to be investment contract securities, the Respondents and the subject Units are exempt
2 from the registration provisions of the Arizona Securities Act.

3 51. For his sixth affirmative defense, Respondent alleges that all of his actions were
4 taken for a proper purpose.

5 52. For his seventh affirmative defense, Respondent alleges that he has not taken any
6 improper action within or from the State of Arizona.

7 53. For his eighth affirmative defense, Respondent alleges that the Commission's claims
8 are barred by the applicable statute(s) of limitations.

9 54. For his ninth affirmative defense, Respondent states that he did not sell investment
10 contracts under Arizona law.

11 55. For his tenth affirmative defense, Respondent alleges the claims in the TC&D are
12 barred by estoppel.

13 56. For his eleventh affirmative defense, Respondent alleges the claims in the TC&D
14 are barred by laches.

15 57. For his twelfth affirmative defense, Respondent alleges that the claims in the TC&D
16 are barred by waiver.

17 58. For his thirteenth affirmative defense, Respondent alleges that the claims in the
18 TC&D are barred by assumption of risk.

19 59. For his fourteenth affirmative defense, Respondent alleges that the Securities
20 Division has failed to allege securities fraud with reasonable particularity as required by Rule 9(b)
21 of the Arizona Rules of Civil Procedure.

22 60. For his fifteenth affirmative defense, Respondent alleges that he did not know, and
23 in the exercise of reasonable care could not have known, of any alleged untrue statements or
24 material omissions as set forth in the TC&D.
25
26
27

1 61. For his sixteenth affirmative defense, Respondent states that he has not acted with
2 the requisite scienter.

3 62. For his seventeenth affirmative defense, Respondent states that he has not employed
4 a deceptive or manipulative device in connection with the purchase or sale of any security.

5 63. For his eighteenth affirmative defense, Respondent states that the investors have
6 suffered no injuries or damages as a result of Respondent's acts or the alleged acts of any of the
7 other Respondents named in this action.

8 64. For his nineteenth affirmative defense, Respondent states that he never made any
9 misrepresentations or omissions, material or otherwise.
10

11 65. For his twentieth affirmative defense, Respondent alleges that he acted in good faith
12 and did not directly or indirectly induce the conduct at issue.

13 66. For his twenty-first affirmative defense, Respondent states that he has caused no
14 damages.
15

16 67. For his twenty-second affirmative defense, Respondent alleges that purchasers
17 relied on others, and not the Respondents named in this action, in connection with the matters at
18 issue in the TC&D.

19 68. For his twenty-third affirmative defense Respondent alleges that he did not
20 participate at any time in any offer or sale.

21 69. Respondent alleges such other affirmative defenses set forth in Arizona Rule of
22 Civil Procedure 8(c), as may be determined to be applicable through discovery.
23

24 70. Respondent reserves the right to amend this Answer to assert additional defenses
25 after completion of appropriate discovery.
26
27

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IX.

ANSWER AND AFFIRMATIVE DEFENSE REQUIREMENTS

Respondent has fully complied with the Answer and Affirmative Defense requirements.

WHEREFORE, there is no basis for the imposition of liability of any kind or nature, and there should be no award of any kind or nature against the Respondent.

RESPECTFULLY SUBMITTED this 9th day of February, 2007.

ROSHKA DeWULF & PATTEN, PLC

By

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Copy of the foregoing hand-delivered
this 9th day of February, 2007 to:

Marc E. Stern, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
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